

91-784

No. \_\_\_\_\_

Supreme Court, U.S.

FILED

NOV 12 1991

OFFICE OF THE CLERK

In The  
Supreme Court of the United States  
October Term, 1991

RICHARD T. CARPENTER, JR.,

*Petitioner,*

vs.

STATE OF CONNECTICUT,

*Respondent.*

Petition For A Writ Of Certiorari To The  
Supreme Court Of Connecticut

PETITION FOR A WRIT OF CERTIORARI

JOHN R. WILLIAMS  
WILLIAMS AND WISE  
51 Elm St., Suite 409  
New Haven, CT 06510  
(203) 562-9931  
*Counsel for Petitioner*



### QUESTION PRESENTED

Are the due process guarantees of *North Carolina v. Pearce* violated when, after a successful appeal, a criminal defendant is sentenced to a higher percentage of the maximum possible sentence than had been imposed after his original conviction?

TABLE OF CONTENTS

	Page
QUESTION PRESENTED .....	i
TABLE OF AUTHORITIES .....	iii
OPINION BELOW .....	1
JURISDICTION .....	2
CONSTITUTIONAL PROVISIONS INVOLVED.....	2
STATEMENT OF THE CASE.....	2
REASONS FOR GRANTING THE WRIT .....	4
CONCLUSION .....	6

## TABLE OF AUTHORITIES

Page

## CASES:

Arizona v. Rumsey, 467 U.S. 203 (1984) .....	5
Chaffin v. Stynchcomb, 412 U.S. 17 (1973).....	5
Colten v. Kentucky, 407 U.S. 104 (1972) .....	5
North Carolina v. Pearce, 395 U.S. 711 (1969).....	4
State v. Carpenter, 214 Conn. 77, 570 A.2d 203 (1990) .....	3
United States v. Halper, 490 U.S. ___, 109 S.Ct. 1892 (1989).....	5
Wasman v. United States, 468 U.S. 559 (1984) .....	5



No. \_\_\_\_\_

—◆—  
In The  
**Supreme Court of the United States**  
October Term, 1991  
—◆—

RICHARD T. CARPENTER, JR.,  
*Petitioner,*  
vs.

STATE OF CONNECTICUT,  
*Respondent.*

—◆—  
**Petition For A Writ Of Certiorari To The  
Supreme Court Of Connecticut**  
—◆—

**PETITION FOR A WRIT OF CERTIORARI**  
—◆—

Richard T. Carpenter, Petitioner, requests that a writ of certiorari issue to review the judgment of the Connecticut Supreme Court affirming his 20-year prison sentence on August 20, 1991.

—◆—  
**OPINION BELOW**

The opinion of the Supreme Court of Connecticut is officially reported at 220 Conn. 169 (1991). It is reproduced in the Appendix to this Petition beginning at App. p. A-1.

## JURISDICTION

The judgment of the Connecticut Supreme Court was entered on August 20, 1991. A timely motion for reargument was denied on September 19, 1991. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

---

## CONSTITUTIONAL PROVISION INVOLVED

The Fourteenth Amendment to the United States Constitution provides in relevant part: "Nor shall any State deprive any person of life, liberty or property without due process of law. . . ."

---

## STATEMENT OF THE CASE

This case presents the unusual and unprecedented question whether due process of law prohibits the imposition of a criminal sentence which constitutes a higher percentage of the maximum permissible penalty than that which was imposed before a successful appeal which resulted in the defendant being convicted of a less serious crime the maximum possible penalty for which was less than the sentence he had received at his original sentencing.

On January 13, 1989, Richard T. Carpenter, Jr., was convicted of murder in the Connecticut Superior Court at New Haven and sentenced to a prison term of 50 years. The maximum possible penalty for murder was 60 years in prison. Mr. Carpenter appealed to the Connecticut Supreme Court, which reversed his conviction on the

ground "that the evidence presented by the State was simply insufficient to preclude the reasonable hypothesis that the defendant, out of frustration, engaged in reckless conduct that caused the death of the victim." *State v. Carpenter*, 214 Conn. 77, 84-85, 570 A.2d 203 (1990). The case was remanded to the trial court with instructions that Mr. Carpenter be convicted and sentenced on the lesser included offense of manslaughter in the first degree in violation of Connecticut General Statutes § 53a-55(a)(3).

Re-sentencing took place on September 28, 1990, before the same judge who had imposed the original sentence. Mr. Carpenter argued that the court was constitutionally limited to imposing upon him a sentence no greater than the same proportion of the maximum possible sentence available for the crime of manslaughter than had been imposed for the crime of murder. He argued, that is, that since on sentencing for the crime of murder the court had imposed a sentence constituting exactly five-sixths of the maximum possible sentence, it must for the crime of manslaughter impose a sentence no greater than five-sixths of the maximum sentence for that crime – in other words, sixteen and two-thirds years. The court, however, without making any comment of any kind, imposed the maximum possible sentence of 20 years.

The State of Connecticut subsequently requested the trial judge to articulate his reasons for imposing the 20-year prison term and on March 18, 1991, he filed a memorandum of decision stating that in his view the circumstances attending the death of the victim were "monstrous." He held: "The injuries suffered by this victim were terrible and as a result, a defenseless child died.

This was a despicable act on the part of the defendant and called for the maximum sentence allowed by law."

On appeal, the Connecticut Supreme Court held that the sentence imposed upon remand was not in any way more severe than that imposed prior to the original appeal. The court held: "It is clear to us, as it apparently was to the trial court, that certain criminal conduct may fairly be considered as falling somewhat short of the extreme end of the murder spectrum, but be at the most extreme end of the manslaughter spectrum, and deserving of the maximum punishment for that crime. In light of the fact that due process concerns the actual impact of re-sentencing on a defendant, not percentages, the defendant's foray into mathematical comparisons is inapposite."



#### REASONS FOR GRANTING THE WRIT

CERTIORARI SHOULD BE GRANTED TO DETERMINE WHETHER THE DUE PROCESS GUARANTEES OF *NORTH CAROLINA V. PEARCE* REQUIRE THAT, AFTER A SUCCESSFUL APPEAL, A CRIMINAL DEFENDANT NOT BE RE-SENTENCED TO A HIGHER PERCENTAGE OF THE MAXIMUM POSSIBLE SENTENCE THAN THAT WHICH WAS IMPOSED AT THE TIME OF HIS ORIGINAL CONVICTION

*North Carolina v. Pearce*, 395 U.S. 711 (1969), has spawned many cases testing the true meaning of the due process prohibition upon vindictive imposition of harsher sentences after successful appeals, the ultimate purpose of which is protection of the availability and integrity of the appeal process in criminal cases.

Thus, it has been held that the prohibition does not apply to trials *de novo* when no appeal has intervened. *Colten v. Kentucky*, 407 U.S. 104 (1972). It has been held that the prohibition does not apply to cases where the sentences are imposed by different juries. *Chaffin v. Stynchcomb*, 412 U.S. 17 (1973). It has been held that the prohibition does apply to sentencing trials in Capital cases. *Arizona v. Rumsey*, 467 U.S. 203 (1984). It has been held that sound reasons supporting an increased sentence must appear on the record to avoid the due process ban. *Wasman v. United States*, 468 U.S. 559 (1984). It has been held that even the addition of civil penalties at the resentencing violates the due process prohibition. *United States v. Halper*, 490 U.S. \_\_\_, 109 S.Ct. 1892 (1989).

In this case, the Petitioner was continuously incarcerated throughout the time between his first and second sentencings. There was no new trial or plea and he was sentenced by the same judge without any additional facts being suggested anywhere on the record. Initially, the sentencing judge offered no explanation for his decision at the second sentencing to impose the maximum possible penalty. After receiving a request for articulation, he referred simply to the serious nature of the conduct underlying the conviction. This would be present in virtually any such case.

The issue presented by this case is novel and interesting. It involves an important aspect of the general prohibition upon vindictiveness at a resentencing following an appeal and, as such, merits the attention of this court.



### CONCLUSION

For the reasons stated above, this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

JOHN R. WILLIAMS  
51 Elm St., Suite 409  
New Haven, CT 06510  
(203) 562-9931  
*Attorney for Petitioner*

No. \_\_\_\_\_

---

In The  
Supreme Court of the United States  
October Term, 1991

---

RICHARD T. CARPENTER, JR.,  
*Petitioner,*

vs.

STATE OF CONNECTICUT,  
*Respondent.*

---

APPENDIX TO  
PETITION FOR A WRIT OF CERTIORARI TO  
THE SUPREME COURT OF THE  
STATE OF CONNECTICUT

---



## APPENDIX TABLE OF CONTENTS

	Page
Decision of Connecticut Supreme Court in State of Connecticut v. Richard T. Carpenter, Jr., 220 Conn. 169 (August 20, 1991).....	A-1
Order on Motion for reargument dated September 19, 1991.....	A-9
Memorandum of Decision dated March 18, 1991...	A-10



STATE OF CONNECTICUT *v.* RICHARD T. CARPENTER, JR.  
(14173)

SHEA, CALLAHAN, GLASS, COVELLO and BORDEN, JS.

The defendant's conviction for the crime of murder of an eighteen month old child was set aside by this court and the case was remanded to the trial court with direction to render a judgment of guilty of manslaughter in the first degree and to sentence the defendant in accordance with that conviction. The trial court had initially sentenced the defendant to fifty years imprisonment, which was five-sixths of the maximum possible sentence allowed by statute. On remand, the trial court resentenced him to the maximum term of imprisonment of twenty years from the manslaughter conviction. The defendant appealed claiming that the severity of his resentence violated due process because the sentence he received on remand was greater, in proportion to the maximum sentence statutorily available, than the sentence he originally received for murder. *Held* that in view of the overall impact of the new sentence on the defendant, the sentence on remand, which was thirty years less than his original sentence, could not be construed as being more severe than the sentence initially imposed; the trial court was entitled to find that the criminal conduct of the defendant was deserving of the maximum punishment allowable for the crime of manslaughter.

Argued May 31 – decision released August 20, 1991

Amended information charging the defendant with the crime of murder, brought to the Superior Court in the

judicial district of New Haven and tried to the jury before *Quinn, J.*; verdict and judgment of guilty, from which the defendant appealed to this court, which set aside the trial court's decision and remanded the case with direction to render a judgment of guilty of manslaughter in the first degree and to sentence the defendant in accordance with that conviction; on remand, the court, *Quinn, J.*, rendered judgment of guilty of manslaughter in the first degree and sentenced the defendant accordingly, and the defendant appealed to this court. *Affirmed.*

*John R. Williams*, for the appellant (defendant).

*Steven M. Sellers*, assistant state's attorney, with whom, on the brief, was *Michael Dearington*, state's attorney, for the appellee (state).

CALLAHAN, J. The issue in this appeal is whether a criminal defendant's right to due process is violated when he is resentenced on a lesser included offense after a successful appeal of the greater offense and receives a sentence which, while thirty years less than his original sentence, is the *maximum* sentence allowed for the lesser offense, when he had received only *five-sixths of the maximum sentence* allowed for the greater offense.

The defendant, Richard T. Carpenter, Jr., was convicted of the crime of murder in violation of General Statutes § 53a-54a and sentenced to a term of imprisonment of fifty years. The maximum prison term for murder is imprisonment for "life," which is defined to mean "a definite sentence of sixty years." General Statutes §§ 53a-35a and 53a-35b. After the defendant appealed his conviction to this court, we vacated his murder conviction and remanded the case for resentencing on the lesser

included offense of manslaughter in the first degree in violation of General Statutes § 53a-55(a)(3). *State v. Carpenter*, 214 Conn. 77, 87, 570 A.2d 203 (1990). On remand, the trial court sentenced the defendant to a term of imprisonment of twenty years, the maximum allowable sentence for manslaughter in the first degree. General Statutes § 53a-35a. The defendant has appealed, claiming that the maximum sentence of twenty years that he received for manslaughter in the first degree violates principles of due process and double jeopardy.

The defendant was convicted of causing the death of eighteen month old Cassandra Demming, who died from injuries she suffered when the defendant forcefully threw her into a bathtub. The underlying facts surrounding that tragic event are fully set forth in the opinion of this court in *State v. Carpenter*, supra. As a result of the death of the child, the defendant was charged with murder in violation of § 53a-54a.<sup>1</sup> He was tried and convicted of murder

---

<sup>1</sup> "[General Statutes] Sec. 53a-54a. MURDER DEFINED. AFFIRMATIVE DEFENSES. EVIDENCE OF MENTAL CONDITION, CLASSIFICATION. (a) A person is guilty of murder when, with intent to cause the death of another person, he causes the death of such person or of a third person or causes a suicide by force, duress or deception; except that in any prosecution under this subsection, it shall be an affirmative defense that the defendant committed the proscribed act or acts under the influence of extreme emotional disturbance for which there was a reasonable explanation or excuse, the reasonableness of which is to be determined from the viewpoint of a person in the defendant's situation under the circumstances as the defendant believed them to be, provided nothing contained in this subsection shall constitute a defense to a prosecution for, or

(Continued on following page)

by a jury and was sentenced to a term of imprisonment of fifty years. Thereafter, the defendant appealed to this court claiming that his conviction was based on insufficient evidence to prove beyond a reasonable doubt that he had intended to cause the child's death. We reversed the trial court, finding that the evidence concerning the defendant's intent was insufficient, and remanded the case for sentencing on the lesser included offense of manslaughter in the first degree in violation of § 53a-55(a)(3).<sup>2</sup>

At the resentencing hearing, the defendant argued to the trial court that principles of due process limited the maximum allowable sentence that could be imposed.

---

(Continued from previous page)

preclude a conviction of, manslaughter in the first degree or any other crime.

"(b) Evidence that the defendant suffered from a mental disease, mental defect or other mental abnormality is admissible, in a prosecution under subsection (a), on the question of whether the defendant acted with intent to cause the death of another person.

"(c) Murder is punishable as a class A felony in accordance with subdivision (2) of section 53a-35a unless it is a capital felony."

<sup>2</sup> General Statutes § 53a-55(a)(3) provides: "A person is guilty of manslaughter in the first degree when . . . (3) under circumstances evincing an extreme indifference to human life, he recklessly engages in conduct which creates a grave risk of death to another person, and thereby causes the death of another person."

Specifically, the defendant claimed that he was constitutionally protected from receiving a term of imprisonment greater than five-sixths of the twenty year maximum sentence for manslaughter in the first degree, or sixteen and two-thirds years, because the court originally had sentenced him to fifty years imprisonment, only five-sixths of the maximum sentence for murder of sixty years allowed by General Statutes § 53a-35b.<sup>3</sup> The trial court was unpersuaded by the defendant's argument and resentenced him to the maximum term of imprisonment of twenty years.

In this appeal, the defendant, relying on *North Carolina v. Pearce*, 395 U.S. 711, 89 S. Ct. 2072, 23 L.Ed. 2d 656 (1969), and its progeny, claims that his resentencing to a twenty year period of incarceration violated principles of due process and double jeopardy.<sup>4</sup> He claims that because

---

<sup>3</sup> Defense counsel stated: "In this case your Honor imposed a sentence that was exactly five-sixths of the maximum that was available or permissible. Accordingly, I would submit that the due process clause of the Fourteenth Amendment to the Federal constitution as well as the provisions from Article One of the Connecticut Constitution effect a maximum permissible in this case of five-sixths of the maximum that is available on the charge of manslaughter, and that has to be sixteen and two-thirds years." He further stated, "I would submit to the Court that I think that a fair sentence in this case would be certainly no greater than ten years and a legal sentence in this case must be, I submit, no greater than sixteen and two-thirds years."

<sup>4</sup> Because the defendant has failed to articulate any cognizable double jeopardy claim either in his brief or at oral argument, we limit our review in this case to the due process claim.

the sentence he received on remand was greater, in proportion to the maximum sentence statutorily available, than the sentence he originally received for murder, it is a more severe sentence for due process purposes than his original sentence. Further, he claims that because the sentence is more severe, the trial court had a duty to articulate its reasons for the sentence on the record in order to avoid a presumption of unconstitutional vindictiveness under *Pearce*. Because we conclude that the defendant did not receive a more severe sentence on remand, we find the defendant's argument unpersuasive.

Due process requires that "vindictiveness against a defendant for having successfully attacked his first conviction must play no part in the sentence he receives" after prevailing on appeal. *North Carolina v. Pearce*, supra, 725; *State v. Sutton*, 197 Conn. 485, 499, 498 A.2d 65 (1985), cert. denied, 474 U.S. 1073, 106 S. Ct. 833, 88 L. Ed. 2d 804 (1986). Therefore, "whenever a judge imposes a *more severe* sentence upon a defendant after a new trial, the reasons for his doing so must affirmatively appear" and be made part of the record. (Emphasis added.) *North Carolina v. Pearce*, supra, 726; *State v. Sutton*, supra, 500. Initially then, before undertaking a *Pearce* analysis, we must determine whether the sentence imposed on remand was, in fact, greater than the sentence originally imposed. If it is not, application of the presumption of vindictiveness is not required. *United States v. Vontsteen*, 910 F.2d 187, 192, reh. granted, 919 F.2d 957 (5th Cir. 1990); *United States v. Bay*, 820 F.2d 1511, 1513-14 (9th Cir. 1987).

In determining whether the sentence was more severe, "[i]t is the actual effect of the new sentence as a

whole on the total amount of punishment lawfully imposed by [the judge] on the defendant . . . which is the relevant inquiry . . . . " *United States v. Markus*, 603 F.2d 409, 413 (2d Cir. 1979). Further, "[i]n determining whether the second sentence is harsher than the first, we look not at the technical length of the sentence but at its overall impact on [the defendant]." *United States v. Williams*, 651 F.2d 644, 647 (9th Cir. 1981).

In determining the overall impact of a sentence on defendants, courts have found a wide range of resentencing possibilities to be more severe than the initial sentence. Certainly, a sentence on remand that imposes a longer sentence to serve in terms of actual years than did the original sentence would be considered more severe. *North Carolina v. Pearce*, *supra*; *United States v. Williams*, *supra*; *State v. Sutton*, *supra*. Similarly, courts have determined that a sentence on remand requiring a defendant to remain on parole for a longer period of time; *United States v. Albanese*, 554 F.2d 543, 549 (2d Cir. 1977); or to serve consecutive rather than concurrent sentences constitutes a greater punishment than the sentence originally imposed. *State v. Macumber*, 119 Ariz. 516, 522-23, 582 P.2d 162, cert. denied, 439 U.S. 1006, 99 S. Ct. 621, 58 L. Ed. 2d 683 (1978); *Kinney v. State*, 458 So. 2d 1191, 1192 (Fla. App. 1984).

In this case, the defendant makes no claim that his sentence was increased in severity in any way remotely similar to the cases previously cited. He claims rather that the sentence he received on remand is more severe than his original sentence because, although his sentence on remand was thirty years less than his original sentence, it

was greater in proportion to the maximum sentence statutorily available than was his original sentence.

The defendant, however, has failed to provide any authority, and we have not located any, in support of the validity of his proportionality claim. Nor can we perceive any reason or policy for such a claim. It is clear to us, as it apparently was to the trial court, that certain criminal conduct may fairly be considered as falling somewhat short of the extreme end of the murder spectrum, but be at the most extreme end of the manslaughter spectrum, and deserving of the maximum punishment for that crime. In light of the fact that due process concerns the actual impact of resentencing on a defendant, not percentages, the defendant's foray into mathematical comparisons is inapposite.

The judgment is affirmed.

In this opinion the other justices concurred.

---

STATE OF CONNECTICUT  
SUPREME COURT

NO. SC 14173

STATE OF CONNECTICUT

v.

RICHARD T. CARPENTER, JR. :SEPTEMBER 19, 1991

ORDER

THE MOTION OF THE DEFENDANT, FILED  
AUGUST 27, 1991, FOR REARGUMENT, HAVING BEEN  
PRESENTED TO THE COURT, IT IS HEREBY ORDERED  
DENIED.

BY THE COURT,

/s/ Francis J. Drumm, Jr.  
CHIEF CLERK

NOTICE SENT: 9/20/91  
JOHN R. WILLIAMS  
STEVEN M. SELLERS, A.S.A.  
CLERK, NEW HAVEN J.D.  
(CR7-109287)  
HON. FRANCIS QUINN  
REPORTER OF JUDICIAL DECISIONS

---

STATE OF CONNECTICUT : SUPERIOR COURT  
: JUDICIAL DISTRICT  
VS. : OF HARTFORD-NEW  
: BRITAIN AT  
: HARTFORD  
RICHARD CARPENTER : MARCH 18, 1991

(Filed March 18, 1991)

A jury had convicted this defendant of the crime of Murder for which this court sentenced him to Fifty years in prison. Upon appeal, our Supreme Court remanded the matter to this court for further proceedings, *State v. Carpenter*, 214 Conn. 77. Our Supreme Court, in its wisdom, determined that a jury could not have found beyond a reasonable doubt that this defendant had the specific intent to commit murder. The matter was remanded to this court for sentencing on the charge of manslaughter in the 1st degree.

The evidence in this case proved beyond a reasonable doubt that this defendant caused the death of an eighteen

month old baby. In listening to the medical testimony, it was obvious that the physical punishment inflicted on this child was monstrous. The coroner indicated in his testimony that the force needed to cause the injuries was the equivalent of dropping the child from a fifth floor window. The child had a skull fracture and broken ribs. These injuries, as explained by Doctor Carver, were caused by a lethal blow to the skull of fairly great force and the rib injuries by a fairly significant force, either by a fist or violent shaking.

The injuries suffered by this victim were terrible and as a result, a defenseless child died. This was a despicable act on the part of the defendant and called for the maximum sentence allowed by law.

/s/ Quinn, J.  
Quinn

---